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AmeriMark Automotive AG, and Third-Party Defendants
Shaen Bernhardt, Martin Fasser Heeg, Stefan Kammerlander,
and AmeriMark Group AG*

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK
AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

v.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**PLAINTIFFS' EXPERT DISCLOSURE
AND NOTICE OF EXPERT
DESIGNATION**

Case No. 2:23-cv-00467

Judge: Hon. Ted Stewart

Magistrate Judge: Hon. Cecilia M. Romero

Pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure, Rule DUCivR 26-1(a)(2) of the Local Civil Rules of the District of Utah and the Court's Amended Scheduling Order (ECF No. 88), Plaintiffs Capana Swiss Advisors AG and AmeriMark Automotive AG submit the following Expert Disclosure and Notice of Designation.

In support of Plaintiffs' claims and defenses and as a counter to expert(s) designated by Defendants Rymark, Inc., Nicholas Thayne Markosian, John Kirkland, and Vicky Small, Plaintiffs hereby designate the following as expert witnesses they may use at trial to present evidence pursuant to, *inter alia*, Federal Rules of Evidence 702, 703, and 705:

- 1. Rick S. Hoffman, CPA/ABV
Roger W. Smith, CPA/ABV
Lone Peak Valuation Group
6955 Union Park Center, Suite 200
Cottonwood Heights, UT 84047**

Rick S. Hoffman is a certified public accountant, accredited in accounting and business valuation. He has over thirty years of experience in public accounting and consulting and has been primarily involved with calculating damages related to commercial litigation and has spent considerable time performing business valuations inside and outside of the litigation arena, with particular emphasis in the valuation of intellectual property. Mr. Hoffman was formerly a director at PriceWaterhouseCoopers. He has taught on the subject of damages and has testified in state court, federal court, and in arbitrations. Mr. Hoffman has also acted as Special Master and has served as a court-appointed expert. He has published over 30 articles, books and speeches on the subject of financial valuation, including the book, "Intellectual Property Damages: Guidelines and Analysis."

Roger W. Smith is a certified public accountant, accredited in business valuation and certified in financial forensics by the American Institute of Certified Public Accountants. He is a Managing Director at Lone Peak Valuation Group with over twenty-five years of experience in public accounting and consulting. He specializes in the valuation of closely-held businesses and intangible assets for the purposes of acquisitions, sales, purchases, stock options and litigation/dispute support (lost profit claims, intellectual property damage claims, shareholder disputes, etc.). Mr. Smith also performs various accounting/transaction reviews and analyses. He has testified in federal court, state court, arbitrations and has acted as a court appointed expert and a special litigation committee member.

Mr. Hoffman and Mr. Smith may offer expert testimony, including rebuttal testimony, regarding the computation of Plaintiffs' damages based on their claims in this action, and potential rebuttal of Defendants' computation of their alleged damages, including but not limited to, out-of-pocket damages, loss of benefit-of-the-bargain, costs of unpaid dividends and any additional monetary remedies that Plaintiffs are entitled to in this action.

**2. Patrick Kilbourne, CPA/ABV, CMA, CFE, CFF, CGMA, MBA, MACC
Paul N. Shields, CFA, CPA, CIRA, CDBV, ABV
Berkeley Research Group, LLC
201 S. Main Street, Suite 450
Salt Lake City, Utah 84111¹**

Patrick Kilbourne is a Managing Director at Berkeley Research Group. Mr. Kilbourne holds the following credentials: Certified Public Accountant; Certified Management Accountant; Certified Fraud Examiner; Certified in Financial Forensics; Accredited in Business Valuation by

¹ A decision regarding Plaintiffs' damages expert(s) will be made shortly once scheduling conflicts are resolved.

the AICPA; and Chartered Global Management Accountant. He is an expert in applying finance, accounting and economic analysis to intellectual property damage assessments, lost profit calculations and forensic accounting investigations. He has been retained as an expert in numerous matters and has testified as an expert in federal, state, and arbitration venues.

During Mr. Kilbourne's career he has advised companies in non-litigation matters relating to forensic investigations, royalty audits, implementing costs saving practices, and operational issues. His experience spans a broad range of industries, including pharmaceutical, technology, software, retail products, chemicals, manufacturing, automotive, healthcare, biotechnology, construction, real estate, telecommunications and oil & gas. Mr. Kilbourne may offer expert testimony, including rebuttal testimony, regarding the computation of Plaintiffs' damages based on their claims in this action, and potential rebuttal of Defendants' computation of their alleged damages, including but not limited to, out-of-pocket damages, loss of benefit-of-the-bargain, costs of unpaid dividends and any additional monetary remedies that Plaintiffs are entitled to in this action.

Paul N. Shields is a Managing Director at Berkeley Research Group. He has over thirty years of experience as a valuation expert and restructuring professional. His professional designations are Chartered Financial Analyst (CFA), Certified Public Accountant (CPA), Certified Insolvency and Restructuring Advisor (CIRA), Certification in Distressed Business Valuation (CDBV), and Accredited in Business Valuation (ABV). Mr. Shields has expertise in business valuation, financial advisory, damage assessments, and forensic accounting – particularly in the context of financial distress and bankruptcy. The valuation services provided by Mr. Shields have been performed primarily in the context of contested valuation matters. In

particular, Mr. Shields has assessed reasonably equivalent value and solvency in the context of avoidance actions, assessed damages and quantified claims in the context of bankruptcy litigation, and has valued business interests and assets for corporate reorganizations and shareholder disputes. He has also performed services as a financial advisor in the context of business restructurings and loan workouts. In addition, he has performed services as a state-court receiver, special master and mediator, and has testified in federal and state courts on numerous occasions. Mr. Shields has provided instruction on valuation in the context of financial distress and bankruptcy at conferences for the Turnaround Management Association, the American Bankruptcy Institute, the Association of Insolvency and Restructuring Advisors, and the American Institute of Certified Public Accountants. Mr. Shields may offer expert testimony, including rebuttal testimony, regarding business valuation in connection with the computation of Plaintiffs' damages based on their claims in this action, and potential rebuttal of Defendants' computation of their alleged damages.

**3. Jeffrey H. Harris, Ph.D.
American University
208 Kogod School of Business
Washington, D.C. 20016**

Dr. Jeffrey H. Harris is currently the Gary D. Cohn Goldman Sachs Chair in Finance at American University's Kogod School of Business. Dr. Harris has an extensive background in market microstructure and regulatory issues and recently served as Chief Economist and Division Director for the Division of Economic and Risk Analysis at the U.S. Securities and Exchange Commission. Previously he served as Chief Economist at the U.S. Commodity Futures Trading Commission and as Visiting Academic at the NASDAQ Stock Market. Dr. Harris has previously held faculty appointments as the Dean's Chair in Finance at the Whitman School of Management at Syracuse University, as the Collins Chair of Finance in the Cox School

of Business at Southern Methodist University (visiting), at the University of Delaware, at the University of Notre Dame and at Ohio State University. His research appears in the *Energy Journal*, *European Financial Management*, *Financial Management*, *The Financial Review*, the *Journal of Finance*, the *Journal of Investment Management*, the *Journal of Financial Economics*, the *Journal of Financial and Quantitative Analysis*, the *Journal of Futures Markets*, the *Review of Futures Markets* and the *Review of Financial Studies*, among others. Dr. Harris has co-written chapters in finance books such as “Equity Market Derivatives” in *Financial Derivatives: Pricing and Risk Management* (2009) and “Commodities: Markets, Performance and Strategies” in *Finance et Valeurs*. He has taught courses in options, futures, and other derivatives, empirical finance, and speculative markets at the undergraduate, master’s, and doctoral levels. Dr. Harris is currently a board member of the FINRA Economic Advisory Board (2017-Present); the Editorial Advisory Board, *Journal of Risk Management* (2014-Present); and the Editorial Board, *Commodities* (2022-Present). He has served on the Editorial Advisory Board for the *Journal of Risk Finance* and actively referee papers for several finance and economics journals. He has also consulted with various organizations on finance-related issues and has provided testimony before the CFTC and U.S. Congress on numerous matters involving pricing and financial speculation. Dr. Harris received his B.A. in Physics and MBA from the University of Iowa and a Ph.D. in Finance from Ohio State University.

Dr. Harris may offer testimony, including potential rebuttal testimony, related to stock trading, including patterns associated with manipulative trading, as it relates to the facts, claims, issues and circumstances in this case, including and in response to, Defendants’ pump-and-dump allegations.

**4. Bernd Pietrus
Truebelstrasse 26
8712 Staefa
Switzerland**

Bernd Pietrus is a Swiss Certified Public Accountant (dipl. Wirtschaftsprüfer) and a U.S. certified public accountant. He is a former Big 4 Audit Partner with twenty-seven years of audit experience in Switzerland, Germany and the U.S. Mr. Pietrus is proficient in IFRS, US GAAP, Swiss GAAP FER, Swiss Code of Obligations, tax accounting and compliance, group reporting and consolidation, audits, SOX, internal audit, corporate governance, IT auditing and management, fraud prevention, compliance, and investigations. He is fluent in both German and English. Mr. Pietrus is the Head of Financial Reporting and Accounting / Finance Readiness for DiNAQOR AG and has been retained as an expert as part of the annual CPA Exam in Switzerland. He is also the Managing Partner, CEO, Founder, and board member of Eagles Rock Partners AG providing professional services in audit, advisory, consulting, accounting HR and payroll matters. finance projects, IFRS, and U.S. GAAP Audits under Swiss law.

Mr. Pietrus may offer testimony, including potential rebuttal testimony, related to the Commercial Register in Switzerland, including European accounting requirements and procedures, and the corporate transactions at issue in this case, as well as how these issues relate to the facts, issues, claims and circumstances in this case.

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Consistent with the Court's Amended Scheduling Order (ECF No. 88), Plaintiffs will provide any further counter designations to Defendants' designated experts on or before April 4, 2025; their expert reports on or before May 10, 2025; and their counter reports on or before June 10, 2025.

Dated: February 27, 2025

VENABLE LLP

/s/ John S. Worden

John S. Worden (*Admitted Pro Hac Vice*)
Sarah E. Diamond (*Admitted Pro Hac Vice*)

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AG and AmeriMark Automotive AG, and
Third-Party Defendants Shaen Bernhardt,
Martin Fasser Heeg, Stefan Kammerlander,
and AmeriMark Group AG*

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2025, I caused a true and correct copy of the foregoing **PLAINTIFFS' NOTICE OF EXPERT DESIGNATION** to be filed on CM/ECF and accordingly electronically served to the parties of record.

/s/ Hannah Ector

Hannah Ector